IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 2 OF 2004

Mr. Prakash Balkrishna Vernekar,
Major, married, bussinessman,
Son of Shri Balkrishna Vernekar,
Residing at Bicholim, Goa. ... Applicant

versus

1. State,

2. Mr. Felix Fernandes,
   major, residing at Cansaulim,
   Salcete, Goa.

3. Mrs. Stella D'Souza,
   Major, r/o Altinho Apartments,
   E-Block, Altinho,
   Mapusa, Bardez, Goa. … Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. Kamaxi Sambari, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No.1/State.

Mr. N. N. Sardessai and Ms. Flora Mendosa, Advocates for Respondent No.3.

CORAM : N. A. BRITTO, J.

DATE : 16TH OCTOBR,2004.

ORAL JUDGMENT

This revision application is directed against the Orders

dated 8th January, 2001 of the learned Judicial Magistrate, First Class, Mapusa and Judgment/Order dated 1st December, 2003 of the learned 1st Additional Sessions Judge, Panaji.

2. The dispute between the Petitioner who was examined as P.W.5 in Criminal Case No.205/96/Sr/I and Respondent No.3 who was examined as P.W.1 in the said Criminal Case is regarding the return of some gold bars sent to the learned Judicial Magistrate, First Class, Mapusa as M.Os 7 to 14 in the said case and which admittedly were attached from the possession of the Petitioner/P.W.5, Prakash Vernekar.

3. At the conclusion of the trial, Respondent No.2/Accused was convicted under Sections 457 and 380 Indian Penal Code and at the same time, the learned Judicial Magistrate, First Class, ordered M.Os 1 to 14 to be handed over to P.W.1, Stella D'Souza.

4. The records show that on or about 14th October, 1996, the said P.W.1, Stella D'Souza, had filed an application stating that the said gold ornaments be returned to her. This application came to be disposed of by Order dated 15th October, 1996 of the learned Judicial Magistrate, First Class, Mapusa, stating that the property was in melted gold form and it would be returned only after proper inquiry. On 10th March, 1998, the said P.W.1, Stella D'Souza, filed another application for the return of the said gold ornaments which was again

disposed of by Order dated 17th August, 1998. By this Order, the learned Judicial Magistrate, First Class, also directed the accused to remain present at the time of holding of the inquiry on 11th September, 1998 and although, summons were issued to the Petitioner for the said inquiry, no inquiry was conducted and the case proceeded thereafter with the recording of the evidence of P.W.4, Abdul Khan on 11th September, 1998. Thereafter, the Petitioner filed an application dated 25th September, 1998 claiming the said gold ornaments but the same remained on record without any orders passed thereon.

5. Thereafter and as already stated, the learned Judicial Magistrate, First Class, proceeded to return the gold ornaments including M.Os.7 to 14 to P.W.1, Stella D'Souza, after considering the evidence on record led by the prosecution.

6. Admittedly, there were two claims made for the return of the said gold ornaments, namely, M.Os.7 to 14. One was made by the Petitioner/P.W.5, Prakash Vernekar, from whose possession they were seized and the other was made by P.W.1, Stella D'Souza. By Order dated 10th March, 1998, the learned Judicial Magistrate, First Class, had stipulated that the claim of the said P.W.1, Stella D'Souza, would be adjudicated only after holding an inquiry while no order was passed on the application of the Petitioner/P.W.5, Prakash Vernekar.

7. Section 452 of the Code of Criminal Procedure, 1973, deals with the disposal of property at conclusion of trial and sub-section (1) thereof provides that when an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

8. Admittedly, the learned Judicial Magistrate, First Class, did not proceed with the inquiry which the learned Judicial Magistrate had ordered to be held by virtue of Order dated 10th March, 1998. Likewise, the learned Judicial Magistrate, First Cxlass, did not pass any Order into the Petitioner's application dated 25th September, 1998. In my view, once there were two conflicting claims for the return of the said gold ornaments, namely, M.O.7 to M.O.14, it was proper for the learned Judicial Magistrate, First Class, to have conducted an inquiry into their respective claims and only then ordered the said gold ornaments to anyone of them who was entitled to the possession thereof.

9. Pending rival claims, in my view, it was improper on the part of the learned Judicial Magistrate, First Class, to have decided

the matter of return of the said property only on the basis of the prosecution evidence led in the case.

10. In the above view of the matter, both the Orders deserve to be set aside. Consequently, the learned Judicial Magistrate, First Class, is hereby directed to hold an inquiry into the rival claims as regards the said M.Os by giving an opportunity to the Petitioner/P.W.5, Prakash Vernekar as well as P.W.1, Stella D'Souza and decide which of them is entitled to the possession of the said gold ornaments. The said inquiry to be completed as expeditiously as possible and in any event within a period of six months from the date of receipt of this Order.

N. A. BRITTO, J.

RD.